

732.406-73

732.406-73 LOC contract clause.

(a) If payment is to be provided by LOC, the contract shall contain the clause in subsection 752.232-70.

(b) Contracting offices shall ensure that an appropriate (48 CFR) FAR payment clause is also included in the contract, in the event that the LOC is revoked pursuant to 732.406-74.

[56 FR 67225, Dec. 30, 1991, as amended at 64 FR 5008, Feb. 2, 1999]

732.406-74 Revocation of the LOC.

If during the term of the contract FM/CMP believes that the LOC should be revoked, FM/CMP may, after consultation with the cognizant contracting officer(s) and GC, revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 733—PROTESTS, DISPUTES, AND APPEALS

Subpart 733.1—Protests

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733.270-1 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under USAID contracts.

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AUTHORITY: Sec. 621, Pub. L. 87-195, 73 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp. p. 435.

Subpart 733.1—Protests

SOURCE: 61 FR 39094, July 26, 1996, unless otherwise noted.

733.101 Definitions.

(a) All "days" referred to in this subpart are deemed to be "calendar days",

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in accordance with FAR 33.101. In the case of USAID overseas offices with non-Saturday/Sunday weekend schedules, the official post weekend applies in lieu of Saturday and Sunday.

(b) All other terms defined in FAR 33.101 are used herein with the same meaning.

[61 FR 39094, July 26, 1996, as amended at 64 FR 42042, Aug. 3, 1999]

733.103-70 Protests to the agency.

USAID follows the agency protest procedures in FAR 33.103, as supplemented by this section.

733.103-71 Filing of protest.

(a) Protests must be in writing and addressed to the Contracting Officer for consideration by the M/OP Director.

(b) A protest shall include, in addition to the information required in FAR 33.103(d)(2), the name of the issuing Mission or office.

(c) Material submitted by a protester will not be withheld from any interested party outside the government or from any government agency if the M/OP Director decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

[61 FR 39094, July 26, 1996; 61 FR 51235, Oct. 1, 1996, as amended at 64 FR 42040, Aug. 3, 1999]

733.103-72 Responsibilities.

(a) *M/OP Director*. The decision regarding an agency protest shall be made by the M/OP Director within 30 days from the date a proper protest is filed unless the M/OP Director determines that a longer period is necessary to resolve the protest, and so notifies the protester in writing. The M/OP Director shall make his or her decision after personally reviewing and considering all aspects of the case as presented in the protest itself and in any documentation provided by the contracting officer, and after obtaining input and clearance from the Assistant General Counsel for Litigation and Enforcement (GC/LE). The decision shall be in writing and constitutes the final decision of the Agency.

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(b) *Contracting Officer*. The Contracting Officer is responsible for requesting an extension of the time for acceptance of offers as described in FAR 33.103(f)(2).

[61 FR 39094, July 26, 1996; 61 FR 51235, Oct. 1, 1996, as amended at 64 FR 42040, Aug. 3, 1999]

733.103-73 Protests excluded from consideration.

(a) *Contract administration*. Disputes between a contractor and USAID are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978.

(b) *Small business size standards and standard industrial classification*. Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

(c) *Procurement under Section 8(a) of the Small Business Act*. Contracts are let under Section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the Contracting Officer, and are not subject to review.

(d) *Protests filed in the General Accounting Office (GAO)*. Protests filed with the GAO will not be reviewed.

(e) *Procurements funded by USAID to which USAID is not a party*. No protest of a procurement funded by USAID shall be reviewed unless USAID is a party to the acquisition agreement.

(f) *Subcontractor protests*. Subcontractor protests will not be considered.

(g) *Judicial proceedings*. Protests will not be considered when the matter involved is the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

(h) *Determinations of responsibility by the contracting officer*. A determination by the contracting officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the M/OP Director.

(i) *Small Business Certificate of Competency Program*. Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of com-

petency under that section will not be reviewed by the M/OP Director.

[61 FR 39094, July 26, 1996, as amended at 64 FR 42040, Aug. 3, 1999]

Subpart 733.27—USAID Procedures for Disputes and Appeals

733.270-1 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under USAID contracts.

(a) The ASBCA is hereby designated the authorized representative of the Administrator of the U.S. Agency for International Development (USAID) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant to the provisions of contracts requiring the determination of such appeals by the Administrator or his/her duly authorized representative or Board.

(b) In acting under this designation, the ASBCA will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of USAID with approval of the Chairman of the ASBCA.

(c) The General Counsel of USAID will assure representation of the interests of the Government in proceedings before the ASBCA.

(d) All officers and employees of USAID will cooperate with the ASBCA and Government counsel in the processing of appeals so as to assure their speedy and just determination.

[53 FR 4980, Feb. 19, 1988. Redesignated at 61 FR 39095, July 26, 1996; 61 FR 51235, Oct. 1, 1996]

733.270-2 Special procedures regarding contract disputes appeals promulgated pursuant to paragraph 2 of the Administrator's designation.

(a) The following rules will apply, in lieu of Rules 3 and 4(a) of the ASBCA,